

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL HARRIS,	§	
	§	No. 435, 2010
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. No. 0911006608
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 12, 2011

Decided: January 21, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 21st day of January, 2011, on consideration of the briefs of the parties, it appears to the Court that:

1) Michael Harris appeals from his convictions, following a stipulation of facts, of possession of a firearm by a person prohibited, carrying a concealed deadly weapon, and resisting arrest. His sole argument is that the trial court erred in denying his motion to suppress. We find no merit to the argument and affirm.

2) On the night of November 9, 2009, Delaware State Police Corporal Brian Ritchie was on routine patrol when he noticed a Jeep Cherokee parked behind a bar

with a person, later identified as Harris, sitting in the driver's seat. Ritchie pulled into the parking lot, and as he drove by the Jeep, Harris turned on the car's lights and engine. Ritchie stopped about 10 feet from the Jeep, in a location that did not block Harris from leaving the parking lot. Harris then turned off the lights and engine. Ritchie got out of the patrol car and walked toward the Jeep. Harris opened his car door and placed a pit bull puppy on the ground.

3) Ritchie started a conversation with Harris, asking him first whether everything was alright, and then general questions. The officer noticed a "strong odor of alcoholic beverage coming from his breath . . . and very bloodshot eyes, glassy."¹ Ritchie asked Harris for identification twice and, when Harris failed to comply, Ritchie ordered Harris out of the car. After again asking for identification, Harris produced his driver's license. But Harris appeared very nervous, and was looking from side to side. Ritchie told Harris that he wanted to do a pat-down search for weapons. He tried to reach for Harris's waistband, but Harris backed away.

4) Ritchie then told Harris to place his hands on the patrol car, but Harris refused and started walking away. At that point, Ritchie told Harris that he was under arrest, and Ritchie attempted to take Harris into custody. Harris fled on foot. As he was being apprehended, Harris dropped a handgun on the floor.

¹Appellee's Appendix, B-15.

5) Harris argues that he was “seized,” within the meaning of the Delaware and United States Constitutions², when Ritchie got out of his patrol car and started walking over to Harris’s Jeep. At that point, Harris says, Richie had no reasonable articulable suspicion that Harris had been or was about to engage in unlawful conduct. Thus, Harris contends that his motion to suppress the gun, retrieved later, should have been granted.

6) Under the Delaware Constitution, a person is seized if “a reasonable person would have believed that he or she was not free to ignore the police presence.”³ But, law enforcement officers may make contact with citizens on the street to ask them questions, and “[a] consensual encounter between law enforcement officers and members of the public does not amount to a seizure”⁴

7) After Ritchie parked his patrol car, Harris could have driven away. Instead, he sat in his car and opened the door to put his puppy on the ground. Ritchie walked over to Harris and asked how he was doing. Ritchie did not order Harris out of the car or otherwise exercise any authority over Harris until after Ritchie smelled alcohol on Harris’s breath and noticed Harris’s bloodshot eyes and slurred speech. At that

²U.S. Const. amend. IV; Del. Const. Art. 1, § 6.

³*Jones v. State*, 745 A.2d 856, 869 (Del. 1999).

⁴*Woody v. State*, 765 A.2d 1257, 1263 n.3 (Del. 2001).

point, Ritchie had a reasonable articulable suspicion that Harris had committed or was about to commit the crime of driving under the influence of alcohol.⁵ Accordingly, Ritchie's seizure of Harris was constitutionally permissible, and the Superior Court correctly denied his motion to suppress.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵*Terry v. Ohio*, 392 U.S. 1, 21 (1968) (A reasonable suspicion is one that is based on "specific and articulable facts which, taken together with rational inferences from those facts reasonably warrant th[e] intrusion.").